

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building
1815 H Street, N.W.
Washington, D.C. 20006

June 19, 1980

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11917, *X*
RECORDATION NO. Filed 1425

JUN 19 1980 12 30 PM

Secretary INTERSTATE COMMERCE COMMISSION
Interstate Commerce Commission
Washington, D.C. 20423

0-171A016

11917
RECORDATION NO. Filed 1425

JUN 19 1980

JUN 19 1980 12 30 PM

Date 100.00

INTERSTATE COMMERCE COMMISSION

RECEIVED
JUN 19 2 45 PM '80
I.C.C. BR.
OPERATING LEASE

Dear Madam:

Enclosed please find six fully executed copies of the following documents between the parties listed below relating to certain railroad rolling stock as described herein:

I. Document: Conditional Sale Agreement, dated as of May 30, 1980.

A. Parties: Vendor:

Whittaker Corporation
Berwick Forge & Fabricating
Division

Vendee:

Operating Lease Services, Inc.

B. Addresses: Vendor:

Whittaker Corporation
Berwick Forge & Fabricating
Division
West Ninth Street
P.O. Box 188
Berwick, Pennsylvania 18603

Vendee:

Operating Lease Services, Inc.
c/o Gollust & Tierney, Inc.
30 Rockefeller Plaza, Suite 4510
New York, New York 10020

C. Equipment: Thirty-five (35) 100 ton, 50 foot 6 inch boxcars with AAR mechanical designation "XP" and bearing road numbers NN 201-235.

II. Document: Lease Agreement

A. Parties: Lessor:

Operating Lease Services, Inc.

Lessee:

Nevada Northern Railway Co.

Scott B. White
Operating Lease

Secretary
June 19, 1980
Page Two

B. Addresses: Lessor: Operating Lease Services, Inc.
c/o Gollust & Tierney, Inc.
30 Rockefeller Plaza, Suite 4510
New York, New York 10020

Lessee: Nevada Northern Railway Co.
P.O. Box 16600
Salt Lake City, Utah 84116

C. Equipment: Same as in I.C above.

I respectfully request that the original of this document be recorded under the provisions of 49 U.S.C. §11303. I would also appreciate your stamping the additional copies of the above documents which are not required for your filing purposes and returning them to me. A check in the amount of \$100.00 is enclosed to cover the filing fees.

The undersigned certifies that he is acting as counsel to Operating Lease Services, Inc. and that he has knowledge of the matters set forth in the above described documents.

Sincerely yours,



Scott B. White

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

6/19/80

OFFICE OF THE SECRETARY

Scott B. White
Arent, Fox, Kintner, Plotkin & Kahn
Federal Bar Building
1815 H. Street, N.W.
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/19/80 at 2:50pm , and assigned re-recording number(s). 11917 & 11917-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

11917
RECORDATION NO. Filed 1425

JUN 19 1980 - 2 50 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

DATED AS OF MAY 30, 1980

BETWEEN

WHITTAKER CORPORATION
BERWICK FORGE AND FABRICATING DIVISION
BUILDER

OPERATING LEASE SERVICES, INC.
VENDEE

(COVERING UP TO 35 100-TON STEEL ^{XP}~~XL~~ BOXCARS)

Filed and recorded with the Interstate Commerce Commission
pursuant to 49 U.S.C. 11303 on _____, 1980
at _____, Recordation No. _____

CONDITIONAL SALE AGREEMENT dated as of May 30, 1980 between WHITTAKER CORPORATION (BERWICK FORGE AND FABRICATING DIVISION), a California corporation (hereinafter called the "Vendor" or "Builder") and OPERATING LEASE SERVICES, INC., a Connecticut corporation (hereinafter called the "Vendee").

WHEREAS, the Builder will construct, sell and deliver to the Vendee, and the Vendee will purchase, the railroad equipment described in the Annex A hereto (hereinafter called collectively the "Equipment" or "Units" and individually a "Unit") which Equipment shall be constructed in accordance with the specifications of the Builder Number C80-0204-1 dated February 8, 1980, revised April 2, 1980, which specifications are incorporated herein by this reference thereto; and

WHEREAS, the Vendee, prior to or simultaneously with the execution of this Agreement, will enter into a Lease Agreement dated as of the date hereof (hereinafter called the "Lease Agreement") with Nevada Northern Railway Company (hereinafter called the "Railroad").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE I. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment set forth in Annex A hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided) the Equipment, each Unit of which shall be constructed in accordance with the specifications referred to in the first Recital of this Agreement and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Vendee (which specifications, and modifications, if any, are hereinafter called the "Specifications"). The design, quality, and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission (hereinafter called the "ICC") requirements and specifications and to all standards recommended by the Association of American Railroads (hereinafter called "AAR") reasonably interpreted as being applicable to railroad equipment of the character of such Unit, and each such Unit will be new and unused railroad equipment.

ARTICLE 2. Inspection and Delivery. The Builder will deliver the Units of the Equipment to the Vendee during the delivery period specified in Annex A hereto at the Builder's Renovo, Pennsylvania plant, freight charges, if any, prepaid.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities, and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered to and accepted by the Vendee on or before June 30, 1980 (hereinafter called the "Cut-Off Date") shall be excluded herefrom. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee, and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of the sample Unit and each Unit of the Equipment, such Unit or Units shall be presented to an authorized inspector of the Vendee (who may be an employee of the Railroad) for inspection at the place specified for delivery of such Unit or Units, and if each such Unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee shall execute and deliver to the Builder a certificate of acceptance (hereinafter called a "Certificate of Acceptance") in the form annexed hereto as Annex B stating that such Unit or Units have been delivered, inspected and accepted on behalf of the Vendee on the date indicated in such Certificate of Acceptance (such date being hereinafter called the "Delivery Date").

On delivery and acceptance of each such Unit hereunder at the place specified for delivery, title to each Unit and the right to possession and use of each Unit shall pass to the Vendee and the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such Unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 5 hereof and the Builder shall retain a purchase money security interest in each Unit until it has received payment in full for such Unit in accordance with Articles 3 and 4 hereof.

ARTICLE 3. Purchase Price and Payment. The purchase price (hereinafter called the "Invoiced Purchase Price") per Unit of Equipment is set forth in Annex A hereto.

The Units shall be settled for in one group of Thirty-Five (35) Units, or if less than Thirty-Five (35) Units are delivered and accepted by the Cut-Off Date, then such lesser number of Units as are delivered and accepted by such date. Settlement for the group of Units shall occur at two closings, one of June 30, 1980 (hereinafter called the "First Closing Date"), and the other on October 31, 1980 (hereinafter called the "Second Closing Date").

On the First Closing Date, the Vendee shall pay or cause to be paid to the Builder in cash 16.3265% of the Invoiced Purchase Price with respect to the Units for which settlement is then being made, and on the Second Closing Date, the Vendee shall pay or cause to be paid to the Builder in cash the remainder of such Invoiced Purchase Price, such remainder being 83.6735% of such Invoiced Purchase Price. All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

ARTICLE 4. Title to the Equipment. The Builder shall and hereby does retain a purchase money security interest in each Unit until the Vendee shall have made or caused to be made payment of the full Invoiced Purchase Price of such Unit in accordance with the preceding Article of this Agreement. Any and all additions to the Equipment and any and all parts installed on and additions and replacements made to any Unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and shall be included in the term "Equipment" as used in this Agreement.

When the Builder shall have been paid the full Invoiced Purchase Price in respect of each Unit, absolute right to the possession of, title to and property in each such Unit shall pass to and vest in the Vendee without further transfer or action on the part of the Builder and all security interest of the Builder in and to such Unit shall terminate without further action by the Builder; provided, however, the Vendee shall not be obligated to make payment to the Builder of the remainder of the Invoiced Purchase Price due on the Second Closing Date, until and unless Builder shall (a) execute a bill or bills of sale for such Units in the form annexed hereto as Annex C confirming

the earlier transfer to the Vendee of beneficial title to the Units, free of all liens, security interests, and other encumbrances created or retained by, through, or under the Builder, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate, if any, in order then to make clear upon the public records the title of the Vendee to the Equipment, and (c) deliver an opinion addressed to the Vendee and any third party secured lender to which the Vendee shall have granted a security interest in the Equipment to the effect that (i) the Builder is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has the corporate power and authority to own its property and to conduct its business as presently conducted; (ii) this Agreement has been duly authorized, executed and delivered by the Builder and, assuming its due authorization, execution, and delivery by the Vendee, constitutes a legal, valid and binding obligation of the Builder enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally; (iii) at the time of delivery thereof by the Builder to the Vendee, the Units were free and clear of all claims, liens and encumbrances of any kind except the security interest retained by the Builder hereunder, the rights of the Vendee hereunder, and the rights of the Railroad under the Lease Agreement; and (iv) the Builder's bill of sale relating to the Units described therein has been duly authorized, executed and delivered by the Builder and is effective to confirm the transfer to the Vendee of good and marketable title to such Units.

ARTICLE 5. Warranties. Builder warrants to the Vendee that each Unit will be built in accordance with the Specifications and that each Unit delivered will be free under normal use and service from (i) all defects in material and workmanship (except as to items specified by Vendee and not manufactured by Builder or except items furnished or supplied by Vendee); and (ii) all defects in design (other than designs furnished by Vendee). Builder's obligations under this warranty shall be limited to repairing or replacing any part or parts of any of the Units which shall within one (1) year after delivery of any such Unit be returned to the Builder's manufacturing plant or delivered to such other repair facilities as Builder may designate with transportation charges prepaid and which part or parts the Builder shall be reasonably satisfied, upon Builder's examination, are defective or were not in conformity with the applicable specifications when shipped; provided, that Vendee notifies Builder in writing promptly, after discovery of such defect, and before returning such Unit to the Builder.

INCLUDING
THOSE
REFERRED TO
IN THE SECOND
SENTENCE
OF ARTICLE 1
HEREOF

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND BUILDER SHALL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY FAILURE TO MEET THE AFOREMENTIONED WARRANTY.

The Builder agrees that on the Second Closing Date it will warrant to the Vendee that at the time of delivery of each Unit of Equipment the Builder had at such time legal title to such Unit, and it was at such time free and clear of all claims, liens, security interests, encumbrances and demands of any nature except only the rights of the Builder and the Vendee hereunder, and the rights of the Railroad under the Lease Agreement; at the Second Closing Date each such Unit is free and clear of all claims, liens, security interests, encumbrances and demands claimed, created or suffered by, through or under the Builder; and the Builder agrees that it will defend such title against all such claims, liens, security interests, encumbrances, and demands whatsoever.

Except in cases of articles or materials specified by the Vendee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in this Agreement, to indemnify, protect and hold harmless the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns or the users of the Equipment (i) because of the use in or about the construction of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right or (ii) arising out of any accident or tort during the construction, possession or storage by such Builder of any Unit of Equipment resulting in damage to property or injury or death to any person. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Vendee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and

deliver to the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Vendee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Vendee of any claim known to the Vendor from which liability may be charged against such Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Builder hereby:

(a) represents and warrants to the Vendee, its successors and assigns, that this Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Vendee, this Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto:

(b) agrees that it will from time to time and at all times, at the reasonable request of the Vendee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Vendee or intended so to be:

(c) agrees that, upon request of the Vendee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record this Agreement or any other instrument evidencing any interest of the Builder therein or in the Units upon payment in full to the Builder; and

(d) represents and warrants to the Vendee, its successors and assigns, that at the time of delivery thereof by the Builder to the Vendee, each Unit and all components and parts thereof will be new equipment unused by any other person.

ARTICLE 6. Default. The failure of the Vendee to pay to the Builder when due any amount due the Builder hereunder, with respect to any Unit shall be deemed a default hereunder with respect to such Unit, in which event the Builder shall be entitled, with respect to such Unit, to such rights and remedies as are provided under the Uniform Commercial Code of the Commonwealth of Pennsylvania.

ARTICLE 7. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its principal place of business at the following specified addresses:

(a) to the Vendee, 47 Locust Hill Road, Darien, Connecticut 06820, Attention: President

(b) to the Builder, Post Office Box 188, West Ninth Street, Berwick, Pennsylvania 18603, Attention: Comptroller;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 8. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

ARTICLE 9. Execution. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

WITNESSES:

OPERATING LEASE SERVICES, INC.

Ridgely W. B.

BY: Paul E. Tierney

WHITTAKER CORPORATION (Berwick
Forge and Fabricating Division)

Joseph J. Laluchoff

BY: Peter C. Bayer

STATE OF CONNECTICUT)
COUNTY OF Fairfield) SS: Darien,

On this 16th day of June, 1980, before me, Ridgely W. Brown, the undersigned officer, personally appeared Paul E Tierney, Jr., who acknowledged himself to be the President of Operating Lease Services, Inc., a corporation, and that he, as such authorized officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand.

RIDGELY W. BROWN
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1984

Ridgely W. Brown
Notary Public

My commission expires on _____, 19__.

STATE OF PENNSYLVANIA)
COUNTY OF Columbia) SS:

On this 18TH day of June, 1980, before me, the Subscriber, a Notary Public for the Commonwealth of Penna, personally appeared Peter C. Bayer, who acknowledged himself to be the Exec. Vice President of Whittaker Corporation (Berwick Forge and Fabricating Division), a corporation, and that he, as such Exec. Vice President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Exec. Vice President

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Lloyd H. Adams
Notary Public

LLOYD H. ADAMS, NOTARY PUBLIC
BERWICK BORO, COLUMBIA COUNTY
MY COMMISSION EXPIRES SEPT. 19, 1982
Member, Pennsylvania Association of Notaries

Annex A

Description of Equipment

<u>Specifications</u>	<u>Maximum Quantity</u>	<u>Road Numbers (Inclusive)</u>	<u>Unit</u>	<u>Purchase Price</u> <u>Aggregate</u>
100 Ton, 50'-6" XL Boxcars XP	35	NN 201-235	\$49,000	\$1,715,000

Delivery

May 1, 1980 to
June 30, 1980 at
Builder's Plant -
Renovo, Pennsylvania

Certificate of Acceptance No. ____

Reference is made to (i) the Lease Agreement dated as of May 30, 1980 between Operating Lease Services, Inc. ("Owner") and Nevada Northern Railway Company ("Railroad"); (ii) the Conditional Sale Agreement dated as of May 30, 1980 between the Owner and Whittaker Corporation (Berwick Forge and Fabricating Division) ("Builder"); both relating to up to Thirty-Five (35) 100-ton ~~XL~~ ^{XP} Boxcars ("Units").

The undersigned hereby certifies that:

1. He is an agent of the Owner duly authorized to receive delivery of, inspect and accept the Units on behalf of the Railroad and the Owner;

2. The Units whose Serial Numbers are listed below (i) have been delivered by the Builder, (ii) have been inspected by the undersigned, (iii) conform to the specifications for the Units referred to in the Purchase Agreement, and (iv) are marked in accordance with the requirements of Section 8 of the Lease Agreement.

The undersigned hereby accepts the Units whose Serial Numbers are listed below on behalf of (a) the Owner pursuant to the Purchase Agreement, and (b) the Railroad pursuant to the Lease Agreement.

Dated: _____ Operating Lease Services, Inc.

BY: _____

Total Number of Units:

Serial Numbers of Units:

BILL OF SALE

WHITTAKER CORPORATION (BERWICK FORGE AND FABRICATING DIVISION) (the "Builder"), in consideration of the sum of One Dollar and other good and valuable consideration paid by Operating Lease Services, Inc. (the "Buyer"), receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer and set over unto the Buyer, its successors and assigns, the following described equipment which has been delivered by the Builder to the Buyer, to wit:

<u>Number of Units</u>	<u>Description</u>	<u>Serial Numbers</u>
------------------------	--------------------	-----------------------

TO HAVE AND TO HOLD all and singular the equipment above-described to the Buyer, its successors and assigns, for it and their own use on behalf forever.

And the Builder hereby warrants to the Buyer, its successors and assigns, that at the time of delivery to the Buyer the Builder was the lawful owner of said equipment and it was at such time free and clear of all claims, liens, security interests, encumbrances and demands of any nature except only the the rights of the Builder and the Buyer under a certain Conditional Sale Agreement dated as of May 30, 1980 between the Builder and the Buyer, and the rights of the Nevada Northern Railway Company (the "NNRC") under a certain Lease Agreement dated as of May 30, 1980 between the Buyer and the NNRC; that said equipment is free and clear of all claims, liens, security interests, encumbrances and demands claimed, created or suffered by, through or under the Builder and that the Builder has good right to sell the same as aforesaid; and the Builder covenants that it will warrant and defend such title against all such claims, liens, security interests, encumbrances and demands whatsoever.

WHITTAKER CORPORATION
(BERWICK FORGE AND
FABRICATING DIVISION)

BY: _____
Title

Dated: _____, 19__